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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/466,113	12/17/1999	JAMES P. KETRENOS	ITL.0248US (P7373)	9791
21906 7590 12/11/2008 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			EXAMINER MIRZA, ADNAN M	
			ART UNIT 2445	PAPER NUMBER
			MAIL DATE 12/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/466,113	<b>Applicant(s)</b> KETRENOS ET AL.	
	<b>Examiner</b> ADNAN M. MIRZA	<b>Art Unit</b> 2445	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. In view of the Appeal filed on 09/12/2008, PROSECUTION IS HEREBY REOPENED.

As set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2454

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eagle et al (U.S. 5,838,916) and further in view of Pierre-Louis et al (U.S. 6,421,777).

As per claims 1,8,17 Eagle disclosed a method comprising: receiving a request for a portion of a file system by a client (col. 2, lines 61-63).

However Eagle did not disclose in detail identifying whether the portion is stored in a first location associated with portions of the file system that have been previously stored by the client. determining whether the portion is stored in a second location associated with portions of the file system that were streamed to the client by a server.

In the same field of endeavor Pierre-Louis disclosed, “The process begins by the client machine being turned on (step 500). A determination is then made as to whether to boot from the network (step 502). If the client is not to boot from the network, then the client boots from the bios boot device loaded in the client (step 504) with the process terminating thereafter (col. 10, lines 25-30). One ordinary skill in the art knows at the time of the invention that the second portion of data stream is loaded up from the client with the process terminating thereafter is interpreted as the portions stored in the second location associated with portions of the file system that were streamed to the client by a server. The data is interpreted as boot file loaded from the client machine.

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have incorporated the process begins by the client machine being turned on (step 500). A determination is then made as to whether to boot from the network (step 502). If the client is not to boot from the network, then the client boots from the bios boot device loaded in the client (step 504) with the process terminating thereafter as taught by Pierre-Louis in the method and system of Eagle to provide a system for deploying applications across the Internet that provides programs which execute quickly at remote sites.

4. As per claim 2,15 Eagle- Pierre-Louis disclosed further comprising retrieving the portion from the server if not stored in the second location (Pierre-Louis, col. 10 lines 25-30).

5. As per claim 3,13 Eagle- Pierre-Louis disclosed wherein identifying further comprises associating portions of the file system used by the client during start-up with the first location (Pierre-Louis, col. 9, lines 32-38).

6. As per claims 4,14,19 Eagle- Pierre-Louis disclosed wherein determining further comprises associating the second location with portions of the file system that were streamed to the client using a multicast operation (Eagle, col. 6, lines 54-66).

7. As per claims 5,22,23 Eagle- Pierre-Louis disclosed wherein associating further comprises: monitoring accesses to a plurality of portions of the file system during start-up;

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retrieving the plurality of portions from the file system; and storing the plurality of portions in the first location (Pierre-Louis, col. 9, lines 10-19).

8. As per claim 6,20,21 Eagle- Pierre-Louis disclosed wherein associating further comprises: retrieving a plurality of portions from the file system using multicasting; and storing the plurality of portions in the second location (Eagle, col. 6, lines 54-66).

9. As per claim 7,24 Eagle- Pierre-Louis disclosed further comprising waiting for the portion to be streamed to the client if not stored in the second location (Eagle, col. 6, lines 54-66).

10. As per claim 9 Eagle- Pierre-Louis disclosed wherein the first location is a non-volatile storage medium (Eagle, col. 3, lines 11-27).

11. As per claim 10,18 Eagle- Pierre-Louis disclosed wherein the non-volatile storage medium is a flash memory device (Eagle, col. 3, lines 11-27).

12. As per claim 11 Eagle- Pierre-Louis disclosed wherein the second location is a volatile storage medium (Eagle, col. 3, lines 11-27).

13. As per claim 12 Eagle- Pierre-Louis disclosed wherein the volatile storage medium is a memory device (Eagle, col. 3, lines 11-27).

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14. As per claim 16 Eagle- Pierre-Louis disclosed wherein the contents of the second location are procured as a background operation (Eagle, col. 2, lines 57-64)

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

16. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Adnan Mirza whose telephone number is (571)-272-3885.

17. The examiner can normally be reached on Monday to Friday during normal business hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571)-272-3933. The fax for this group is (703)-746-7239. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866)-217-9197 (toll-free).

/A. M. M./

Examiner, Art Unit 2145

/Larry D Donaghue/

Primary Examiner, Art Unit 2454

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2454